

## § 115.65

## 6 CFR Ch. I (1–15 Edition)

the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

### § 115.65 Coordinated response.

(a) Each facility shall develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse.

(b) Each facility shall use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(c) If a victim of sexual abuse is transferred between facilities covered by subpart A or B of this part, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services.

(d) If a victim is transferred from a DHS immigration detention facility to a facility not covered by paragraph (c) of this section, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

### § 115.66 Protection of detainees from contact with alleged abusers.

Staff, contractors, and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

### § 115.67 Agency protection against retaliation.

(a) Staff, contractors, and volunteers, and immigration detention facility detainees, shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in

sexual activity as a result of force, coercion, threats, or fear of force.

(b) The agency shall employ multiple protection measures, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency and facility shall monitor to see if there are facts that may suggest possible retaliation by detainees or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any detainee disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff. DHS shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

### § 115.68 Post-allegation protective custody.

(a) The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.

(b) Detainee victims shall not be held for longer than five days in any type of administrative segregation, except in highly unusual circumstances or at the request of the detainee.

(c) A detainee victim who is in protective custody after having been subjected to sexual abuse shall not be returned to the general population until completion of a proper re-assessment, taking into consideration any increased vulnerability of the detainee as a result of the sexual abuse.

(d) Facilities shall notify the appropriate ICE Field Office Director whenever a detainee victim has been held in administrative segregation for 72 hours.

(e) Upon receiving notification that a detainee victim has been held in administrative segregation, the ICE Field Office Director shall review the placement and consider:

(1) Whether the placement is only as a last resort and when no other viable housing options exist; and

(2) In cases where the detainee has been held in administrative segregation for longer than 5 days, whether the placement is justified by highly unusual circumstances or at the detainee's request.

#### INVESTIGATIONS

##### **§ 115.71 Criminal and administrative investigations.**

(a) If the facility has responsibility for investigating allegations of sexual abuse, all investigations into alleged sexual abuse must be prompt, thorough, objective, and conducted by specially trained, qualified investigators.

(b) Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity.

(c)(1) The facility shall develop written procedures for administrative investigations, including provisions requiring:

(i) Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;

(ii) Interviewing alleged victims, suspected perpetrators, and witnesses;

(iii) Reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator;

(iv) Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph;

(v) An effort to determine whether actions or failures to act at the facility contributed to the abuse; and

(vi) Documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and

(vii) Retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years.

(2) Such procedures shall govern the coordination and sequencing of the two types of investigations, in accordance with paragraph (b) of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

(d) The agency shall review and approve the facility policy and procedures for coordination and conduct of internal administrative investigations with the assigned criminal investigative entity to ensure non-interference with criminal investigations.

(e) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(f) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

##### **§ 115.72 Evidentiary standard for administrative investigations.**

When an administrative investigation is undertaken, the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

##### **§ 115.73 Reporting to detainees.**

The agency shall, when the detainee is still in immigration detention, or where otherwise feasible, following an investigation into a detainee's allegation of sexual abuse, notify the detainee as to the result of the investigation and any responsive action taken.